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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,418	03/06/2001	Raymond Laplante	2039 008800RFE	2558

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EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/800,418	Applicant(s) LAPLANTE ET AL.
Examiner Jeffrey C. Mullis	Art Unit 1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory maximum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-17, 19-21, 23-42 and 45-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17, 19-21, 23-31, 34-42 and 45-49 is/are rejected.
- 7) ☒ Claim(s) 32 and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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All previous rejections and/or objections are hereby withdrawn.

All claims are now under consideration. Applicants are requested to re-present all claims in any response without the status identifier "withdrawn".

Claims 36-39 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The identity of the group of "oxygen barrier polymer(s)" in claim 36 is unclear since the group of polymers does not end with the term "and" or "or". The phrase "acrylonitrile, poly(vinylidene dichloride)" makes no sense in this claim. It is suggested that the term "or" be inserted in claim 36 just before "polyvinylidene dichloride".

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10-17, 19-21, 23-31, 34-42 and 45-49 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cyr et al. (USP 6,455,620).

Cyr discloses a composition which can be formed into a packaging article which may contain a gas barrier polymer such as EVOH and an oxygen scavenger in which the scavenger and the barrier polymer may be present together or present in different layers. Note column 10 lines 50-66. Thermoplastic polymers including the ethylene vinyl alcohol referred to above may be present as blends including polyamides or the ethylene vinyl alcohol as preferred polymers at column 5 lines 11-13. The polyamides are preferably applicants' specific polyamide at the paragraph bridging columns 6 and 7. Photoinitiators and transition metal catalysts may be added at column 2 lines 16-17.

Note that the specific polyamide of applicants is disclosed to be not more than a mere oxygen barrier but is also an oxygen absorber at column 1 lines 59-63. Applicants' photoinitiators including benzophenones are disclosed at the paragraph bridging columns 9 and 10. Applicants' specific transition metal salt catalysts are disclosed in patent claim 13.

No specific examples containing all of applicants' elements in combination are present in the patent. However patentees clearly disclose that groups of materials including applicants'

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specific materials may be combined. Therefore it would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to select applicants' embodiments from that of Cyr et al. in the expectation of adequate results absent any showing of surprising or unexpected results.

Claims 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Clauberg et al. (U.S. 6,610,772), cited of interest contains a disclosure which is similar to that of Cyr et al., cited above with respect to the limitations the application claims.

This Office action is not being made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (571) 272-1075. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (571) 272-1078. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group

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receptionist whose telephone number is (571) 272-0994.

J. Mullis:cdc

May 26, 2004

JEFFREY C. MULLIS
PRIMARY EXAMINER
GROUP 1200

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned below the printed name and title.